UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID L. MURTISHAW, Petitioner, vs. DANIEL VASQUEZ, Warden of the State Prison, San Quentin, Quentin, Respondent.	No. CV-F-91-508-OWW-P DEATH PENALTY CASE ORDER RE: California RESPONDENT'S M O T I O N T O RECONSIDER AND REQUEST FOR I N T E R L O C U T O R Y APPEAL

On February 16, 1993, the court issued its order denying Respondent's motion to dismiss. Respondent now seeks reconsideration of that order or, in the alternative, permission to take an interlocutory appeal. Upon due consideration of the written arguments of the parties, the court now enters its order denying Respondent's motion and request as set forth herein.

A. Motion To Reconsider

Pursuant to Local Rule 230(k), Respondent is required to set forth "new or different facts or circumstances . . . which did not exist or were not shown upon such prior motion, or what other grounds exist for the motion." Because Respondent has failed to demonstrate that new or different facts or other grounds warrant a reversal of this court's previous order the court DENIES the motion for reconsideration.

B. Request for Interlocutory Appeal

An interlocutory appeal of an order in a civil case is proper for cases involving a "controlling question of law as to which there is substantial ground for difference of opinion" in which "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C., § 1292(b). Here, because an immediate appeal will not materially advance

the ultimate termination of the litigation Respondent's request for an interlocutory appeal is DENIED.

IT IS SO ORDERED.

DATED: April 13, 1993

Oliver W. Wanger
UNITED STATES DISTRICT JUDGE